

DEC 20 2012

DEBRA VAN PELT
ISLAND COUNTY CLERK

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

Plaintiff,

v.

LARRY S. KWARSICK,

Defendant.

NO. 12 2 01119 7
INFORMATION - QUO WARRANTO

COMES NOW, GREGORY M. BANKS, Prosecuting Attorney of Island County, State of Washington, and files this Information in Quo Warranto to obtain a judgment ousting Defendant Larry S. Kwarsick from the public office of Mayor of the City of Langley, and from the public office of Town Planner for the Town of Coupeville, and disqualifying him from ever hereafter holding any public office in the State of Washington, based upon the following statement of facts.

I. JURISDICTION AND VENUE

1.1 Plaintiff is the State of Washington, by and through Gregory M. Banks, Island County Prosecuting Attorney.

1.2 Defendant Larry S. Kwarsick, resides in Island County, Washington, and is a public officer, the elected Mayor of the City of Langley, Island County, Washington.

1.3 Defendant Larry S. Kwarsick is also the Town Planner, a public officer, of Coupeville, Island County, Washington.

1.4 Under RCW 7.56.020, an information in quo warranto may be filed by the Prosecuting Attorney in the Island County Superior Court when a public officer in Island County has done any act, which, by the provisions of law, works a forfeiture of his office. Under RCW 9.92.120, the

conviction of a public officer of a crime constituting malfeasance in office provides for automatic forfeiture of office and disqualification from ever after the conviction holding any public office in the State of Washington. Under RCW 2.08.010, this court has the power to issue writs of quo warranto.

1.5 This court has jurisdiction to hear and decide this matter and Island County is the proper venue for this matter.

II. BACKGROUND FACTS

2.1 On December 17, 2012, Defendant Larry Kwarsick, a public officer as the Mayor of the City of Langley, was convicted of the criminal gross misdemeanor of, as a public officer, knowingly making a false or misleading statement in any official report or statement, in violation of RCW 42.20.040, all as provided in specific detail on Exhibits "A," "B," and "C" attached hereto.

2.2 The crime committed by Larry Kwarsick constituted malfeasance in office and he was advised, when charged, that "The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his or her office, and shall disqualify him or her from ever afterward holding any public office in this state. RCW 9.92.120."

III. QUO WARRANTO – OUSTER FROM OFFICE

3.1 Under RCW 7.56.100, Defendant Larry Kwarsick should be found guilty of having done an act which, by the provisions of RCW 9.92.120, works a forfeiture of his office of Mayor of the City of Langley and disqualification from ever hereafter holding any public office in the State of Washington.

IV. REQUEST FOR RELIEF

Plaintiff requests that the court enter judgment as follows:

4.1 Finding that Defendant Larry S. Kwarsick committed a crime constituting malfeasance in office and entering an order ousting him from the public office of Mayor of the City of Langley and disqualifying him from ever hereafter holding any public office in the State of Washington.

4.2 Awarding Plaintiff costs and attorney's fees.

1 4.3 Awarding Plaintiff such other and further relief as may be equitable, appropriate and
2 just.
3

4
5 Dated this 20th day of December, 2012.
6


7
8 
9 GREGORY M. BANKS
10 ISLAND COUNTY PROSECUTING ATTORNEY
11 WSBA #22926
12 Law and Justice Center
13 Post Office Box 5000
14 Coupeville, WA 98239-5000
15 (360) 240-5509
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Exhibit "A"

FILED

DEC 17 2012

DEBRA VAN PELT
ISLAND COUNTY CLERK

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

LARRY KWARSICK,

Defendant.

NO. 12-1-00265-8

MISDEMEANOR JUDGMENT AND
SENTENCE

☐ Clerk's Action Required - Paragraph 11

THIS MATTER, coming on for hearing in open court on the 17th day of December, 2012, the defendant, LARRY KWARSICK, being present in person and with his attorney, CHARLES ARNDT, the State of Washington being represented by the Prosecuting Attorney for Island County, Washington, or his deputy; and the defendant having entered a plea of guilty to the crime(s) of False Report By a Public Officer, and the court having inquired of the defendant if he has any reason why judgment and sentence should not be entered against him in this cause, and the defendant not having any legal reason, NOW, THEREFORE,

IT IS HEREBY ADJUDGED that the defendant, LARRY KWARSICK, is guilty of the crime of False Report By a Public Officer RCW 42.20.040, as charged in the Information, and that pursuant to the laws of the State of Washington, the court hereby sentences the defendant as follows (items marked with an "X" are ordered):

☒ Defendant shall serve a jail term of 364 days with 349 days suspended, for a total of 15 days, and to remain suspended for twelve (12) months, during which time the defendant shall be placed on Community Supervision upon the following conditions:

☐ 1. The defendant shall be under the active supervision of the Department of Corrections for _____ months. The defendant shall report in person to the local

SCANNED 6 25010 6 21

1 Department of Corrections office in the defendant's county of residence within 72 hours of the
2 date of this Order to provide accurate address and contact information. If the defendant is in
3 custody during the 72-hour period immediately after sentencing, than the report deadline shall be
4 within 72 hours of the defendant's release from custody. The Island County office of the
5 Department of Corrections is located at:

6 499 NE Midway BLVD., STE 1
7 Oak Harbor, WA 98277
8 (888) 801-6618

9 [X] 2. The defendant shall conduct himself as a decent, upright, law-abiding citizen at all
10 times and comply with all laws.

11 [X] 3. The defendant shall meet with the County Clerk's Collections Deputy within 72
12 hours or prior to release from custody.

13 [X] 4. All payments shall be made in accordance with the policies of the clerk and on a
14 schedule established by the clerk of the court, commencing immediately, unless the court
15 specifically sets forth the rate here: Not less than \$250 per month commencing
16 30 days from date of sentencing. The defendant shall notify the court clerk of any change of
17 address until all legal financial obligations are fully satisfied. The Clerk is authorized to collect
18 from the defendant up to \$100 per year for costs of collection services. RCW 36.18.190 and
19 RCW 9.94A.780(5). The payments made by defendant shall be apportioned to the following
20 items in the order they are listed, to-wit:

21 (a) RESTITUTION TOTAL: 0.00

22 TO: Name Address Amount
23 *

24 (b) COURT COSTS: 217.00

25 (c) COST OF COURT-APPOINTED ATTORNEY: 0.00

26 (d) FINE: 2,500.00

27
28 (e) CONTRIBUTION TO ISLAND COUNTY
29 DRUG FUND, REVENUE CODE 1333921230-351500 0.00

30 (f) CRIME COMPENSATION ASSESSMENT: 0.00

(g) DOMESTIC VIOLENCE ASSESSMENT

0.00

TOTAL

\$2,717

- ☐ 5. The defendant shall obtain an alcohol evaluation and comply with treatment.
- ☐ 6. The defendant shall obtain a drug evaluation and comply with treatment.
- ☐ 7. The defendant shall attend and complete anger management counseling.
- ☐ 8. The defendant shall not possess firearms.
- ☐ 9. The defendant shall not possess or consume alcohol.
- ☐ 10. The defendant shall not possess controlled substances without a valid medical prescription.
- ☐ 11. The Clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

☒ 12. Defendant shall serve his/her jail term as follows:

☒ Regular confinement at the Island County Jail with credit for time served and with credit for good time as provided by the jail rules. If not already in custody, defendant shall surrender to the jail at 9:00 a.m., Feb. 4 ~~2013~~ 2013.

☐ Weekend confinement at the Island County Jail, with _____ credit for time served but without good-time credit. Defendant shall surrender to the jail Friday, _____, 201*, between 7 and 8 p.m.

☐ Partial Confinement. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:

- ☐ work crew RCW 9.94A.725;
- ☐ home detention RCW 9.94A.731, .190;
- ☐ work release RCW 9.94A.731.

☐ **ALTERNATIVE CONVERSION.** RCW 9.94A.380. _____ day of total confinement ordered above are hereby converted to _____ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

Confinement shall commence immediately unless stated otherwise.

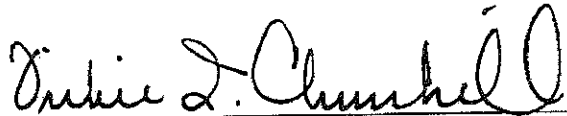
In all cases, defendant shall surrender sober and on time. If the jailer has probable cause to believe that defendant violated either condition he shall detain defendant and bring him before a judge of the sentencing court on the next judicial day a judge is available.

[] 13. The defendant shall have no contact with _____.

[X] 14. Bail is hereby exonerated in this matter if applicable.

This order imposing sentence is signed this 17 day of December, 2012, in the presence of the Prosecuting Attorney.

VICKIE I. CHURCHILL




JUDGE/COMMISSIONER OF THE COURT

Presented by:
GREGORY M. BANKS
ISLAND COUNTY PROSECUTING
ATTORNEY

Copy Received and Approved for Entry:

By: 
GREGORY M. BANKS
PROSECUTING ATTORNEY
WSBA #22926


CHARLES ARNDT
ATTORNEY FOR DEFENDANT
WSBA #19812

I, LARRY KWARSICK, the defendant in this case, have read and have had explained to me the requirements of the sentence in this case, and I have received a copy of this order. I fully understand the requirements of sentence and agree to be bound by them with no reservations whatsoever. I have had the competent advice of my attorney throughout these proceedings.


DEFENDANT

Address: P.O. Box 581
Langley WA 98260
County: P.O. Island

Exhibit "B"

FILED
ISLAND COUNTY CLERK

2012 DEC 13 PM 12:30

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

LARRY KWARSICK,

Defendant.

NO.

12 1 00265 8

INFORMATION CHARGING:

COUNT 1 - False Report By Public Official

COMES NOW GREGORY M. BANKS, Prosecuting Attorney of Island County, State of Washington, or his deputy, and by this Information accuses the above-named defendant of violating the criminal laws of the State of Washington as follows:

COUNT 1 - False Report By a Public Officer

Between the 19th day of February, 2011 through the 25th day of July, 2011, both days inclusive, in the County of Island, State of Washington, the above-named Defendant, who at the time was a public officer, did knowingly make a false or misleading statement in any official report or statement, in violation of RCW 42.20.040.

(MAXIMUM PENALTY- 364 days in jail or \$5,000 fine, or both, pursuant to RCW 42.44.160(3) and RCW 9.92.020, plus restitution, assessments and court costs.

The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his or her office, and shall disqualify him or her from ever afterward holding any public office in this state. RCW 9.92.120)

1 DATED: December 12, 2012.

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3
4 GREGORY M. BANKS
5 ISLAND COUNTY PROSECUTING ATTORNEY

6
7 By: 

8 GREGORY M. BANKS
9 PROSECUTING ATTORNEY
10 WSBA # 22926

11 STANDARD SENTENCE RANGE: 0 – 364 DAYS.
12

13 **DEFENDANT INFORMATION**

14 NAME: Larry Kwarsick			DOB: 11/26/1947		
15 ADDRESS: 290 Louisa Street					
16 CITY, STATE, ZIP: Langley, WA 98260					
17 PHONE #(s): (360)221-6522			DRIV. LIC. NO. KWARSL535Q		DL ST WA
18 SEX: M	RACE: W	HGT: 604	WGT: 210	EYES: BRN	HAIR:
19 OTHER IDENTIFYING INFORMATION					

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INFORMATION

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON

Plaintiff,

vs.

LARRY KWARSICK.

Defendant.

No. 12-1-00265-8

Certification of Probable Cause

I, Detective C.E. Wallace Jr., hereby declare (or certify) the following:

Your Affiant has been a Deputy Sheriff for the Island County Sheriff's Office for over 21 years and has been assigned to the patrol/investigations division. Your Affiant was a patrol officer for the United States Army Military Police Corps for 3 years and a Reserve Police Officer for the Oak Harbor Police Department for 6 months working undercover for a joint multi-agency task force purchasing narcotics.

Your Affiant has investigated numerous criminal cases of various types to include burglary, fraud, forgery, money counterfeiting, identity theft, narcotics trafficking, sexual assaults and death investigations, both natural and otherwise and is familiar with crimes against persons and property and the elements and the equipment used in perpetrating these crimes. Your Affiant is currently assigned to the Investigations Division as a Detective, and has been involved in numerous investigations as a primary and secondary investigator. Your Affiant has attended both the 440-hour Washington State Criminal Justice Training Commission Basic Law Enforcement Academy as well as the 320-hour United States Army Military Police Academy. Your Affiant's other training includes basic as well as advanced investigator training, interviewing and interrogation, marijuana identification and eradication, methamphetamine

identification and manufacturing, cybercrime investigations training and crime scene management training provided by the Federal Bureau of Investigation. Your Affiant is certified by the Department of Treasury/Homeland Security as a Seized Computer Evidence Recovery Specialist (S.C.E.R.S.), the Department of Homeland Security as a Mobile Device Investigator, the EC council as an Ethical Hacker (C|EH) and the Paraben Corporation as a Handheld Examiner (PDA, cell/mobile phone and hybrid devices).

In 2006 the Defendant, Larry S. Kwarsick (DOB 11/26/1947) was the sole proprietor of Sound Planning Services, a land use consulting firm in Langley, Washington. At that time, Kwarsick, d/b/a Sound Planning Services, was acting as the agent for Emmy and Brian Atwood, to obtain development permits for the construction of a single family residence at 401 Minnie Lane, within the city limits of Langley, Washington. Emmy Atwood is Kwarsick's step daughter. Brian Atwood is her husband.

The property at 401 Minnie Lane is mostly wetland. As such, the development of the property required review under the city's Critical Areas Ordinance. On June 3, 2006 Mr. Kwarsick and his wife, Carol McNeil, applied for a Critical Area Review "on behalf of their children Brian and Emmy Atwood." The initial review was conducted by Langley's then Planning Official, Alice Schisel. Ms. Schisel, by letter dated July 28, 2006, granted approval to Larry Kwarsick to develop a residence on the parcel, conditioned upon compliance with various wetland mitigation activities to be undertaken by the developer or property owner. Included in the activities were requirements to plant native wetland vegetation according to certain specifications, to apply for special open-space tax status, to execute a deed restriction on the uses of the wetland portions of the parcel, to submit a more detailed wetland mitigation plan prior to obtaining a building permit, and to submit wetland mitigation monitoring reports for five years.

By letter dated April 6, 2009, Mr. Kwarsick requested that the City of Langley modify the conditions of the Critical Area Review decision. In that letter, Mr. Kwarsick requested that the original planting scheme be modified, that the city allow an accessory dwelling unit, and that the requirement of a split rail fence be eliminated. In his letter, Mr. Kwarsick affirmed his intent to have the property owners executed a deed restriction on uses of the wetland portion of the property. On June 4, 2009, the City of Langley issued an amendment to the 2006 Critical Areas

decision conditionally granting all of his requests. The June 4, 2009 decision was issued by the city's "Community Planner" at the time, Fred Evander. The hard copy of the June 4, 2009 decision in the Langley Planning Department file is unsigned.

On July 10, 2009, Mr. Kwarsick submitted the detailed Wetland Mitigation Plan that was required by the original 2006 critical areas decision. The plan called for phased plantings over seven years and annual monitoring for a total period of 10 years. The plan called for planting native wetland plants in a buffer area the first year after construction, and then planting each of three "planting islands" in years 3, 5, and 7 respectively. On August 25, 2009, planner Fred Evander issued a Notice of Decision on the Atwood Wetland Mitigation Plan, which found that the mitigation plan proposed by Mr. Kwarsick complied with Langley's ordinances. The city granted approval of the Wetland Mitigation Plan, including the ten year monitoring plan. The hard copy of the August 25, 2009 decision in the Langley Planning Department file is unsigned.

The Atwood home was built between 2009 and 2010. The city issued a Certificate of Occupancy on July 14, 2010. On or about August 5, 2010, Fred Evander sent a letter to the Atwoods reminding them of their obligation to submit a wetland monitoring report "soon" and for each of the next nine years. Mr. Kwarsick's company, Sound Planning Services, submitted the first monitoring report, dated November, 2010.

The November, 2010 wetland monitoring report, acknowledged that it was the first report and that there would be subsequent reports. The report stated that the buffer area had been planted, as outlined in the 10-year plan. The report made no mention of the subsequent planting of the three "planting islands" scheduled to occur in years 3, 5, and 7. The report indicates that a monitoring period should not be less than five years. However, the report indicates that "if there are at least two consecutive monitoring reports that demonstrate" success in meeting performance standards, the monitoring period can be reduced. The report anticipates that "the monitoring period could be reduced from 10 years to 5 years." According to Fred Evander, the report was accepted and filed. Mr. Evander indicated that such a report did not require any action by the city, and that he took none.

On December 30, 2010 Fred Evander notified Langley Mayor Paul Samuelson of Evander's resignation, effective January 8, 2011. Evander's resignation was announced at the

January 3, 2011 Langley City Council meeting. At the same meeting, Mayor Samuelson acknowledged that Mr. Evander's supervisor, Larry Cort, was also leaving the city. There were no other members of the city's Community Planning Department. At that same meeting, the city council and mayor executed a contract with Larry Kwarsick, doing business as Sound Planning Services, whereby Mr. Kwarsick would "perform the functions of the Director of Community Planning." The contract itemizes the duties of that public officer. The contract also includes a promise that Mr. Kwarsick "will recuse himself from all matters related to ['clients who have prior or pending land use applications with the CITY']". The contract was initially for a period of one year.

Shortly afterward, the city advertised for a "Community Planner" to replace Fred Evander. The advertisement directed applicants to respond to "Larry Kwarsick, City Planner." Jeff Arango applied for the position on January 27, 2011 and was hired on or about March 2, 2011.

On November 8, 2011, Larry Kwarsick was elected Mayor of Langley, Washington. He took office on January 1, 2012.

In early 2012, Mr. Arango received a public information request regarding the wetland mitigation on Minnie Lane. Mr. Arango has stated that during his review of the file and his discussion with the requester, he noticed discrepancies between the wetland mitigation plan and the status of the file. The file was marked "File Closed" in handwriting that Mr. Arango recognized as Larry Kwarsick's. Mr. Arango discovered an unsigned hard copy document in the file titled "Notice of Decision on the Atwood Wetland Mitigation Plan, Completion of Mitigation Sequencing, Findings of Fact, Conclusions of Law and Notice of Decision." The document was dated December 22, 2010.

The December 22, 2010 Notice is similar in format to the June 4, 2009 and August 25, 2009 decisions described above. All three have headings of "Findings of Fact," "Conclusions of Law" and "Determinations" in the body of the documents. Under each heading is a series of numbered paragraphs. All three documents are printed on City of Langley letterhead. The formatting of the title of December 22, 2010 Notice is obviously different from the formatting of the earlier notices. Fred Evander, who drafted the 2009 documents has indicated that the

formatting of the title on the document dated December 22, 2010 is not consistent with the way he formatted such documents.

The Findings of Fact of the December 22, 2010 Notice contain, in substantial part, verbatim reproductions of the June 4, 2009 "Amendment to Critical Areas Review" described above. Specifically, paragraphs 1 through 7, and paragraphs 10, 11, and 12, are verbatim copies from the June, 2009 document. The December 22, 2010 Notice includes several numbered sections that were not in the June, 2009 document. Specifically, in the Findings of Fact section it says:

8. Since the Original Approval of Critical Areas Review 2006/02, the property is now served by the municipal sewer system of Langley.
9. Staff has monitored the curtain drain system and its connection to the City storm sewer system and has determined that there has been no impact to the wetland hydrology or impact of site.

* * *

13. On November 30, 2010 Larry Kwarsick submitted a monitoring report on the Mitigation Plan approved by the City and advised the City that the restoration would and [sic] had been completed in a single phase rather than 7 year multiphased plan originally proposed.
14. With the exception of the potential threat to the health and integrity of the restored ecosystem from the surrounding landscape, i.e. reed canary grass from the adjoining property, there has been a demonstration of an appropriate trajectory of ecosystem development towards intended goals.

The paragraph numbered 14 is a verbatim reproduction from a concluding paragraph in the wetland monitoring report submitted by Larry Kwarsick in November, 2010.

The December 22, 2010 Notice contains "Conclusions of Law" and "Determinations" that do not exist in any earlier documents in the Planning Department file. Those sections read as follows:

Conclusion of Law

1. The completed project is consistent with the site layout referenced in the decision of Critical Areas Review 2006/02.
2. The completed project is consistent with the intent to preserve and restore the wetland as specified in Critical Areas Review 2006/02. The mitigation

plan proposed three planting islands; enhanced vegetation in the wetland paper buffer, and a deed restriction for the wetland area.

3. City staff reviewed the completed project for consistency with Chapter 16.20 of the Langley Municipal Code, especially the standards associated with Best Available Science and land use around wetlands and streams, and found that the restoration required under the mitigation plan had been satisfactorily completed in conformance with the prior approval.

Determination

1. Implementation required under Critical Areas Review 2006/02 is complete. The owner must continue to maintain restored areas and use the wetland area and its buffer consistent with the City critical area regulations as now exist or as hereinafter amended.
2. Based upon information provided by Island County Planning and Assessor's Departments on the PBRs program, staff determined that the intention of the applicant to prepare a deed restriction on the wetland portion of the property and submit a Public Benefit Rating were not viable or necessary.

On April 6, 2012, in response to questions by Jeff Arango, Mr. Kwarsick admitted to drafting the Notice of Decision with the December 22, 2010 date. On December 22, 2010 Mr. Kwarsick had not yet been retained as the city's planner. Fred Evander was, at that time, the community planner responsible for the development on 401 Minnie Lane. According to Mr. Arango, Mr. Kwarsick told him that Kwarsick was frustrated that Fred Evander had not signed off on the monitoring report before Evander left employment at the city. According to Mr. Arango, Mr. Kwarsick said that Fred Evander had begun a draft of the document, and that Mr. Kwarsick "finished it up," forgetting to change the date. According to Jeff Arango, Mr. Kwarsick stated that he may have "crossed the line" by doing so.

The city's director of public works, Challis Stringer, has indicated that, contrary to the Finding of Fact #9, neither she, nor the city engineer, Ryan Goodman, nor the city's building official, Bob Snyder, inspected nor monitored the curtain drain connection to the city sewer. Fred Evander also denies having performed such an inspection.

Mr. Evander told me that he would not have made a determination that a seven year wetland mitigation sequencing plan was complete after one year, and did not do so in this case.

On May 7, 2012 at 1405 hours I served the Langley City Clerk/Treasurer (Debbie Mahler) the subpoena Duces Tecum issued by the Island County Special Inquiry Judge (SIJ Cause No. 12-01) for records and an Order to produce documents, records and tangible things for special inquiry proceedings.

The order allowed me to take for forensic examination a city desktop computer bearing tag number 10100 and to take or copy the city's computer server for forensic examination. After serving the paperwork I took custody of Whidbey Telecom custom built computer with Langley city tag #10100. Handwritten on the back of the computer in blue ink was "MAYORCOLBURN". This computer reportedly was used by the prior community planners Evander and Kwarsick.

On May 9, 2012, I removed the hard drive from the computer for examination. The drive, a Maxtor DiamondMax Plus-9 80GB, was acquired using Encase version 6.18.0.59 along with Tableau hardware write blocker with current firmware versions to ensure that none of the original media was altered. Encase created an image file of the original media which was stored on a secure Network Attached Storage (NAS) device that is used for my forensic exams. The acquired media was then attached to the Encase case file under the name "Maxtor DiamondMax Plus 9." Using Encase I then conducted a keyword search for the terms "minnie" and "atwood", both of which are terms that would appear several times in any version of the wetland mitigation document.

I identified a relevant document on the hard drive in an area where temporary internet files are stored. The name of the electronic document was "Final Decision on the Atwood Wetland Mitigation Plan.doc." Within the text of the document itself, it was titled: "Notice of Decision on the Atwood Wetland Mitigation Plan, Completion of Mitigation Sequencing, Findings of Fact, Conclusions of Law and Notice of Decision Brian and Emmy Atwood December 25, 2010." (underline added by me). This document was similar to the hard copy document describe above, that was dated December 22, 2010, but there were some differences.

The content of the December 25, 2010 document differed from the December 22, 2010 document described above. The document dated December 25, 2010 did not include numbered Findings 8 and 9 described above on the document dated December 22, 2010. The other findings

of the December 25 documents were renumbered accordingly, ending at number 12. The document dated December 25 did not include the Determination No. 2 that is described above on the document dated December 22, 2010. The December 25, 2010 computer document is apparently in a larger font, and is not on City of Langley letterhead.

The December 25, 2010 electronic document was created using Microsoft Word. The properties of the document, as viewed from within Microsoft Word show that the document was originally created on 02/19/2011 at 11:01 AM. The author of the document is shown as Larry Kwarsick with a company of Sound Planning Services. The properties also show that it was last saved by Larry Kwarsick and had not been printed. The document properties show it was last modified on 7/25/2011 at 3:57 PM. The document was located in the Temporary Internet Files folder, that is a subfolder of the Documents folder of the user "Mayor Neil Colburn." The file creation date, as recorded by the Windows operating system, is 7/25/2011 at 3:57PM. That is the date and time the file was saved in the Temporary Internet Files folder. Based on the company properties this file was created using a Microsoft Word program registered to Sound Planning Services. Based on the location of the recovery it was more likely than not e-mailed to the computer where someone logged in under the "Mayor Neil Colburn" user profile opened it. Mayor Colburn was the predecessor to Mayor Samuelson. Mayor Samuelson took office in January, 2007.

On May 7, 2012, I also located the city's main computer server and determined that it was a single Dell PowerEdge 840 running Windows Server 2003 R2. On May 15, 2012 at approximately 1400 hours I returned to the city at a time arranged to cause as little disruption to city operations as possible. I shut down and removed the drive bay from the city server, which contained three hard drives. I returned to my office and at approximately 1600 hours began the imaging process for the drives. The three drives were acquired (i.e. verbatim copies of every sector of data was copied from the drive) using Encase version 6.18.0.59 along with Tableau hardware write blockers with current firmware versions to ensure that none of the original media was altered. Encase created image files of the original media which were stored on a secure Network Attached Storage (NAS) device that is used for my forensic exams. The acquired media was then attached to the Encase case file under the following names.

Langley #1, A Western Digital WD800JD 80GB HDD drive position 0

Langley #2, A Western Digital WD800JD 80GB HDD drive position 1

Langley #3, A Western Digital WD10EARS 1 TB HDD drive position 2

Using Encase I then conducted the same keyword search from the prior drive for the terms "minnie" and "atwood", both of which are terms that would appear several times in any version of the wetland mitigation document. Among many hits, I identified a relevant Microsoft Word document. The name of the electronic document was "Final Decision on the Atwood Wetland Mitigation Plan.doc". The body of the document contained the title: "Notice of Decision on the Atwood Wetland Mitigation Plan, Completion of Mitigation Sequencing, Findings of Fact, Conclusions of Law and Notice of Decision Brian and Emmy Atwood December 22, 2010." This document was located on the Langley #3 drive.

From within the Microsoft Word application, the properties of the document showed the author was Fred Evander, and that the document was last saved by Larry Kwarsick. It is significant that the "Author" field from the Microsoft Word properties dialog box can be edited by the user who is creating or editing the document. On the other hand, the data for the "Last Saved By" field is determined and maintained internally as metadata by the Microsoft Word application, and cannot be edited by users. In any event, both fields ordinarily identify the user profile attached to the computer or login, and not the actual person using the computer.

The document properties also show it is the second revision of the document, that it was created on 02/21/2011 at 11:00 AM, with a last modified date of 2/21/2011 at 12:00pm. The document was written to the directory Users\Shared Folder\Projects\Permit-Various (Prior to Tracking System)\Atwood at 02/21/2011 at 11:12AM. This appears to be where the "official" version of this document should be saved. Based on the properties, this document was apparently created after Fred Evander left employment with the City of Langley.


This Word document is the same as the hard copy document that was recovered from the physical Planning Department file for the Minnie Lane development project, except that the electronic document is not on City of Langley letterhead.

In response to questioning by Challis Stringer, Mr. Kwarsick admitted to creating the document, which he called a draft, and placing it in the paper project file at the city.

On August 29, 2012 I served a search warrant at the home of Larry Kwarsick, which is also the location of Sound Planning Services. I obtained a desktop computer that Mr. Kwarsick identified for me as one used by his business. A forensic search of that computer's drive, in the manner described above, revealed additional versions of the document previously discussed. One version was identical in formatting and content to the document recovered from the Langley #3 drive (the document dated December 22, 2010, which is identical in content to the hard copy document in the project file). The document is also named "Final Decision on the Atwood Wetland Mitigation Plan.doc". It was created on February 19, 2011 at 11:59 AM, and last modified by Larry Kwarsick on February 20, 2011 at 8:33 PM. The date typed on the top of the document was December 22, 2010. The file was located in a Windows directory path of: E:\Users\Larry\Documents\Atwood.

I declare (or certify) under penalty of perjury of the Laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge and belief.

Signed on: 12/12/12 at Coupeville, Washington

By:  #1067
Detective Ed Wallace